

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CATHERINE MCKOY, MARKUS FRAZIER, and
LYNN CHADWICK, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

THE TRUMP CORPORATION, DONALD J. TRUMP,
in his personal capacity, DONALD TRUMP, JR., ERIC
TRUMP, and IVANKA TRUMP,

Defendants.

No. 1:18-cv-09936-LGS-SLC

**DECLARATION OF MATTHEW D. BRINCKERHOFF IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

MATTHEW D. BRINCKERHOFF, declares under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Matthew D. Brinckerhoff. I am a partner in the firm of Emery Celli Brinckerhoff Abady Ward & Maazel LLP, counsel for Plaintiffs Catherine McKoy, Markus Frazier, and Lynn Chadwick ("Plaintiffs"). I submit this declaration in support of Plaintiffs' Motion for Class Certification.

2. Annexed as **Exhibit 1** is a true and accurate copy of excerpts from the transcript of the August 18, 2022 deposition of David Merriman, who testified on behalf of non-party ACN Opportunity, LLC ("ACN") as its designee pursuant to Fed. R. Civ. P. 30(b)(6).

3. Annexed as **Exhibit 2** is a true and accurate copy of a spreadsheet documenting ACN Independent Business Owner ("IBO") sign-ups from 2012 to 2016.

4. Annexed as **Exhibit 3** is a true and accurate copy of excerpts of the November 18, 2022 Expert Report of Michael Gartenberg.

5. Annexed as **Exhibit 4** [reserved].
6. Annexed as **Exhibit 5** is a true and accurate copy of a February 6, 2006 Trump Organization memorandum from Cathy Glosser enclosing the February 6, 2006 Endorsement Agreement between Donald Trump and ACN.
7. Annexed as **Exhibit 6** is a true and accurate copy of a February 15, 2006 email from Robert Stevanovski at ACN.
8. Annexed as **Exhibit 7** is a true and accurate copy of the February 2008 Endorsement Agreement between Donald Trump and ACN.
9. Annexed as **Exhibit 8** is a true and accurate copy of the January 28, 2009 Appearance and Endorsement Agreement between Donald Trump and ACN.
10. Annexed as **Exhibit 9** is a true and accurate copy of the January 14, 2011 Appearance and Endorsement Agreement between Donald Trump and ACN.
11. Annexed as **Exhibit 10** is a true and accurate copy of the February 13, 2013 Appearance Agreement between Donald Trump and ACN.
12. Annexed as **Exhibit 11** is a true and accurate copy of an October 30, 2015 email from Rhona Graff at The Trump Organization attaching the Mutual Termination of Appearance Agreement executed by Donald Trump and ACN on June 20, 2015.
13. Annexed as **Exhibit 12** is a true and accurate copy of a November 17, 2008 email from Sheila Marcello at ACN attaching an ACN document titled, “24 HOUR GAME PLAN.”
14. Annexed as **Exhibit 13** is a true and accurate copy of excerpts of the November 18, 2022 Expert Report of Stacie Bosley.

15. Annexed as **Exhibit 14** is a true and accurate copy of a December 11, 2012 email from Sheila Marcello at ACN and accompanying attachments, including ACN documents titled: “Road Map to LEXUS,” “IBO Getting Started Process,” and “Presenting the Opportunity.”

16. Annexed as **Exhibit 15** is a true and accurate copy of ACN Opportunity Disc, Version 4.0, June 2010.

17. Annexed as **Exhibit 16** is a true and accurate copy of excerpts of the August 2011 issue of *Success from Home* magazine.

18. Annexed as **Exhibit 17** is a true and accurate copy of ACN Opportunity Disc Version 5.3, December 2011.

19. Annexed as **Exhibit 18** is a true and accurate copy of ACN Opportunity Disc Version 5.5, May 2012.

20. Annexed as **Exhibit 19** is a true and accurate copy of ACN Opportunity Disc Version 5.6, June 2012.

21. Annexed as **Exhibit 20** is a true and accurate copy of ACN Opportunity Disc Version 6.1, September 2012.

22. Annexed as **Exhibit 21** is a true and accurate copy of ACN Opportunity Disc Version 7.0, January 2013.

23. Annexed as **Exhibit 22** is a true and accurate copy of ACN Opportunity Disc Version 9.2, June 2015.

24. Annexed as **Exhibit 23** is a true and accurate copy of excerpts of the November 18, 2022 Expert Report of Kevin Lane Keller.

25. Annexed as **Exhibit 24** is a true and accurate copy of an ACN promotional video featuring Donald Trump.


26. Annexed as **Exhibit 25** is [reserved].
27. Annexed as **Exhibit 26** is a true and accurate copy of an ACN promotional video featuring Donald Trump.
28. Annexed as **Exhibit 27** is a true and accurate copy of excerpts from the transcript of the October 11, 2022 deposition of Donald J. Trump.
29. Annexed as **Exhibit 28** is a true and accurate copy of ACN's 2012 Policies and Procedures.
30. Annexed as **Exhibit 29** is a true and accurate copy of an October 25, 2006 email from Robert Stevanovski at ACN.
31. Annexed as **Exhibit 30** is a true and accurate copy of excerpts of the September 2014 issue of *Success from Home* magazine.
32. Annexed as **Exhibit 31** is a true and accurate copy of excerpts of the August/September 2008 issue of *Success* magazine.
33. Annexed as **Exhibit 32** is a true and accurate copy of excerpts of the August 2010 issue of *Success from Home* magazine.
34. Annexed as **Exhibit 33** is a true and accurate copy of an internal ACN financial analysis titled "ACN Consolidated Summary."
35. Annexed as **Exhibit 34** is a true and accurate copy of a March 26, 2010 letter from Brian L. Davis of McColl Partners to ACN Chairman Robert Stevanovski enclosing a document titled "Confidential Information Memorandum," and excerpts of the same memorandum.
36. Annexed as **Exhibit 35** is a true and accurate copy of excerpts from the transcript of the August 23, 2022 deposition of Anne Archer Butcher.

37. Annexed as **Exhibit 36** is a true and accurate copy of the March 2009 episode of *The Celebrity Apprentice* featuring ACN.

38. Annexed as **Exhibit 37** is a true and accurate copy of the March 2011 episode of *The Celebrity Apprentice* featuring ACN

39. Documents produced by non-party ACN in this case include lengthy spreadsheets listing thousands of ACN Independent Business Owners (“IBOs”) at particular points in time and their ACN earnings, if any. One such spreadsheet is over 700 pages long and lists 65,535 IBOs and “raw data” detailing their earnings, if any. Given the length of the spreadsheet, it is not attached as an exhibit here. Plaintiffs can supplement the record and provide a copy of the complete spreadsheet containing the raw IBO enrollment data to the Court, if needed.

Dated: March 10, 2023



MATTHEW D. BRINCKERHOFF

EXHIBIT 2

US IBO Data

2012	January	February	March	April	May	June	July	August	September	October	November	December
New IBOs	6,568	6,984	7,988	6,455	5,872	6,790	6,206	5,375	3,929	6,832	4,987	4,910
Renewals	2,651	2,682	2,931	2,180	1,926	1,806	2,104	1,928	1,907	2,006	1,600	1,661
Drops	6,141	5,371	8,254	4,999	4,162	3,672	5,690	5,904	6,218	5,982	6,382	6,371
Ending Count	96,427	97,613	95,734	97,456	97,710	99,118	96,516	95,471	93,711	96,850	94,605	94,539
2013	January	February	March	April	May	June	July	August	September	October	November	December
New IBOs	6,696	6,450	7,945	6,328	5,966	5,459	6,920	6,323	6,547	6,598	5,297	4,961
Renewals	2,548	2,425	2,729	2,149	2,020	2,320	2,329	2,014	1,889	2,064	1,560	1,733
Drops	6,365	6,796	8,374	6,627	5,849	6,320	6,345	5,503	4,414	6,778	5,306	4,876
Ending Count	94,870	94,524	94,095	93,796	93,913	93,052	93,627	94,447	96,580	96,400	96,391	96,476
2014	January	February	March	April	May	June	July	August	September	October	November	December
New IBOs	6,958	6,467	8,019	6,259	5,706	4,737	5,328	4,640	5,432	4,923	3,293	3,916
Renewals	2,429	2,378	2,609	2,179	1,813	1,883	2,085	1,848	1,979	1,939	1,595	1,825
Drops	7,010	6,499	8,215	6,548	6,201	5,667	7,310	6,551	6,619	6,594	5,694	5,158
Ending Count	96,424	96,392	96,196	95,907	95,412	94,482	92,500	90,589	89,402	87,731	85,330	84,088
2015	January	February	March	April	May	June	July	August	September	October	November	December
New IBOs	4,013	4,358	4,962	4,281	3,074	3,243	4,581	3,708	2,885	2,869	2,041	2,363
Renewals	2,456	2,371	2,577	2,086	1,696	1,872	2,016	1,863	1,851	1,983	1,376	1,517
Drops	6,867	6,387	8,078	6,341	5,599	5,143	5,372	4,781	5,819	5,037	3,739	4,429
Ending Count	90,058	88,029	84,913	82,853	80,328	78,428	77,637	76,564	73,630	71,462	69,764	67,698
2016	January	February	March	April	May	June	July	August	September	October	November	December
New IBOs	2,250	2,877	3,126	1,836	1,764	1,518	2,229	2,211	2,414	1,820	1,224	1,938
Renewals	2,010	2,141	2,183	1,614	1,421	1,464	1,729	1,485	1,486	1,389	1,127	1,235
Drops	4,522	4,536	5,589	4,965	3,447	3,762	4,893	4,053	3,691	3,453	2,492	2,884
Ending Count	67,259	65,600	63,137	60,008	58,325	56,081	53,417	51,575	50,298	48,665	47,397	46,451